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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/760,377

Applicant(s)

DVORAK ET AL.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-15, 20-34, 39-53, 58-72 and 96-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-15, 20-34, 39-53, 58-72 and 96-99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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### DETAILED ACTION

1. The following is a Final Office action in response to communications received 08/07/2007. Claims 20, 39, 58, and 96 have been amended. Claims 2-15, 20-34, 39-53, 58-72, and 96-99 are pending.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-15, 20-34, 39-53, 58-72, and 96-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (U.S. 6,151,582) in view of Landvater (U.S. 6,609,101).

As per claim 96, Huang et al. teaches a computer-implemented method of generating reports from simulated unit inventory and unit sales on a bottom-up per selling location basis for a multitude of items at a plurality of selling locations, including:

Modeling with a causal event calendar, which is a data structure stored in computer readable memory, a plurality of retail event types that have different impacts on demand, wherein an event data tuple for an event in the causal event calendar includes at least a good identifier, a start date, a stop date and an event type identifier (See column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38 (specifically 6-15, 20-22, and 34-35), column 33, lines 65-67, column 34, lines 15-20, column 37, lines 39-46, which discloses event calendars with types of events that include

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good identifiers, dates, and event type data. See also column 42, lines 20-35, column 53, lines 49-58, and column 54, lines 40-67, column 109, lines 30-52);

Forecasting unit inventory and unit sales at a per-item, per-location level using the event type identifier to identify one of more likely demand impacts and, in combination with other data in the event data tuple, to modify demand projections during the event (See column 13, lines 1-10 and 27-35, column 18, line 45-column 19, line 10 and lines 48-58, column 55, column 57, lines 13-35, and column 109, lines 20-30 and 46-61, which discloses making inventory determinations using the data stored and expected demand impacts);

Generating, from results of the forecasting using the causal event calendar consistently across analytical tool, analytical reports that support retailing activities (See column 11, lines 5-16, column 106, lines 60-67, column 107, lines 37-55, column 108, lines 15-25 and 33-45, column 109, lines 45-60, which discloses generating reports).

However, Huang et al. does not expressly disclose that a selling location identifier is stored in association with a retail event type.

Landvater discloses storing selling location identifiers associated with products with promotions (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17, which discloses selling locations associated with products and promotions).

Both Huang et al and Landvater disclose determining product and inventory needs for periods of promotions. Huang et al. specifically discloses retail outlets and using a promotional calendar that considers type of promotion, promotion dates, impact of promotion, etc. Landvater specifically discloses multiple retail stores in the supply chain,

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and using product/location data. It would have been obvious to one of ordinary skill in the art at the time of the invention to include selling location identifiers associated with the promotional events of Huang et al. in order to more efficiently keep track of the unique and specific needs of specific locations. See column 17, lines 35-57, column 19, lines 5-17, of Landvater.

As per claim 97, Huang et al. teaches event types with corresponding event type identifiers, events involving decisions by a retailer and exogenous factors, wherein the decisions by the retailer include price promotions, advertising promotions, promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction (See column 13, lines 25-35 and 50-55, column 22, lines 15-30, column 34, lines 60-67, column 36, lines 50-65, column 39, lines 60-65, column 54, lines 60-67, column 55, lines 20-33, which discloses price reductions, ads, people buying substitute products, and new products being introduced);

The exogenous factors include seasonal events and special events in a city that increase customer traffic (See column 19, lines 30-40, column 21, lines 15-25, column 33, lines 65-67, column 36, lines 60-65, column 54, line 60-column 55, line 20, which discloses seasonal events and special events (like military shows) that increase usage and demand for an item).

However, Huang et al. does not expressly disclose that the promotional and seasonal events include holiday events.

Landvater discloses holiday events (See figures 10-11, column 11, lines 59-67, column 12, lines 57-67, which discloses holidays).

Both Huang et al and Landvater disclose determining product and inventory needs for periods of promotions. Huang et al. specifically discloses a promotional calendar that considers price promotions, advertising promotions, promotions of substitute or complementary products, and new product introduction. Landvater specifically discloses holiday events and accounting for these events in the inventory planning. It would have been obvious to one of ordinary skill in the art at the time of the invention to include holidays in the seasonal events of Huang et al. in order to more accurately account for types of activities that would cause fluctuations in demand patterns, thus allowing the user to better plan for demand.

As per claim 98, Huang et al. teaches wherein generating analytical reports consistently using the causal calendar data structure further includes reports to support:

Ordering items from suppliers (See column 7, lines 15-21, column 13, lines 44-55, column 31, lines 19-21, column 33, lines 30-45 and line 60-column 34, line 18, column 36, lines 40-67);

Allocating item inventory for seasonal or fashion items received from suppliers among selling locations (See column 13, lines 44-55, column 31, lines 19-21, column 33, lines 30-45 and line 60-column 34, line 18, column 36, lines 40-67, column 42, lines 20-35, wherein the seasonal items are allocated among outlets of the supply chain. See figure 4);

Distributing items from a distribution center to selling locations (See figure 4, column 6, lines 45-67, column 33, lines 30-45 and line 60-column 34, line 18, column 36, lines 40-67, column 42, lines 20-35, wherein items are distributed from DCs (distribution centers)),

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Bottom-up planning of sales, on-hand inventory, and receipt of items into inventory (See column 11, lines 5-16, column 12, lines 50-65, column 20, line 55-column 21, line 30, column 108, lines 15-25, which discloses bottom up planning. See column 34, lines 1-20, column 35, lines 48-60, and column 42, lines 29-55, which discloses on-hand inventory and inventory scheduling and replenishment);

Top down planning that aggregates items at levels higher than individual items (See column 11, lines 5-16, column 13, lines 10-25, column 21, lines 33-67, column 108, lines 45-51, which discloses top down planning);

Open to buy management reports that compare future inventory levels aggregated to a department level or higher with budgeted levels of inventory investment (See column 10, lines 45-50, column 21, lines 20-30, column 107, lines 45-55, column 108, lines 25-42, which discloses budget concerns);

markdown management that manages timing and level of markdown of seasonal items in order to sell out available inventory by a predetermined out date (See column 22, lines 5-35, column 33, lines 65-67, column 36, lines 50-65, column 109, lines 30-60, which discloses a promotional calendar with scheduled dates and sell out by dates that are managed. See column 54, lines 49-67, which discloses outputting analysis of promotional effects, which includes reducing a price by a given percentage).

However, while Huang et al. discloses markdown management that manages timing and level of markdown, Huang et al. does not expressly disclose that the markdown management recommends timing and level of markdowns. Landvater does not expressly disclose recommending timing and level of markdowns.

Huang et al. discloses a system that manages a promotional calendar, the promotional calendar including price reductions (markdowns). The system helps the user consider past sales to determine future demand and make inventory decisions. Examiner takes official notice that it is old and well-known to allow a system to recommend an inventory setting, such as pricing, instead of requiring the user to set such a value in order to optimize the profit gained by selling the inventory. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include making recommendations in the markdown management of Huang et al. in order to efficiently and accurately determine the inventory levels needed to meet the demand during the promotion by fully considering the impact of such a promotion.

Claim 99 recites substantially similar limitations to claim 98 and is therefore rejected using the same art and rationale set forth above.

As per claims 2-5, Huang et al. discloses a plurality of retail event types that have different impacts on demand, wherein an event data tuple for an event in the causal event calendar includes at least a good identifier, a start date, a stop date and an event type identifier (See column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38 (specifically 6-15, 20-22, and 34-35), column 33, lines 65-67, column 34, lines 15-20, column 37, lines 39-46, which discloses event calendars with types of events that include good identifiers, dates, and event type data. See also column 53, lines 49-58, and column 54, lines 40-67, column 109, lines 30-52). Huang et al. further discloses retail outlets (See column 42, lines 20-35). Huang et al. further discloses product groups and product families (See column 8, lines 1-5 and 30-35, column 10, lines 55-65, column 19, lines 30-55, column 20, lines 33-35, column 40, lines 45-50).



However, Huang et al. does not disclose the specific details of the association between a product or products and a location or locations, as per claims 2-5.

As per claim 2, Landvater teaches wherein a pair of the good identifier and event identifier attributes associate a single good at a single selling location with one of the plurality of events (See figures 10, 16-17, and 19-21, column 11, line 53-column 12, line 40, and column 17, lines 5-55, which discusses a good and an event, such as promotions, holidays, displays, etc.).

As per claim 3, Landvater wherein a pair of the good identifier and event identifier attributes associate a single good at a group of selling locations with one of the plurality of events (See column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17, which discuss individual goods at multiple selling locations, and overriding occurs. Specifically, when an event works better at one location than another, inventory is balanced).

As per claim 4, Landvater teaches wherein a pair of the good identifier and event identifier attributes associate a group of goods at a single selling location with one of the plurality of events (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 17, lines 35-57, column 19, lines 5-17, wherein goods are grouped and projected across the retailers while also considering events, such as promotions, displays, etc.).

As per claim 5, Landvater discloses wherein a pair of the good identifier and event identifier attributes associate a group of goods at a group of selling locations with one of the plurality of events (See column 5, lines 1-5, column 8, lines 5-25, column 11,

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lines 20-32, column 15, lines 25-45 and 55-65, column 23, lines 45-65, which discusses group products and events such as displays).

Both Huang et al and Landvater disclose determining product and inventory needs for periods of promotions. Huang et al. specifically discloses retail outlets and using a promotional calendar that considers type of promotion, promotion dates, impact of promotion, etc. Landvater specifically discloses multiple retail stores in the supply chain, and using product/location data. It would have been obvious to one of ordinary skill in the art at the time of the invention to include specifics of product/location identifiers (i.e. single product-single location, single product-multiple location, multiple product-single location, and multiple product-multiple location) associated with the promotional events of Huang et al. in order to more efficiently keep track of the unique and specific needs of specific locations. See column 17, lines 35-57, column 19, lines 5-17, of Landvater.

As per claim 6, Huang et al. teaches wherein the attributes of the causal calendar further includes an impact estimate quantity corresponding to the impact of the event on sales (See column 22, lines 5-38, and column 109, lines 35-60, which discloses impact factors).

As per claims 7-8, Huang et al. teaches wherein the set of analysis programs is adapted to basic retail goods and to seasonal retail goods (See column 6, lines 1-20 and 55-65, column 7, lines 5-22, column 12, lines 25-50, column 36, lines 60-65, which discloses goods of retailers and goods that are associated with seasons. See also claim 97 above, which addresses seasons and seasonal items).

As per claim 9, Huang et al. teaches wherein the set of analysis programs is adapted to basic retail goods and to seasonal retail goods (See column 6, lines 1-20 and

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55-65, column 7, lines 5-22, column 12, lines 25-50, column 36, lines 60-65, which discloses goods of retailers and goods that are associated with seasons. See also claim 97 above, which addresses seasons and seasonal items). However, Huang et al. does not expressly disclose fashion retail goods.

Landvater teaches wherein the set of analysis programs is adapted to fashion retail goods (See column 10, lines 30-45, column 12, lines 9-40, column 15, lines 25-50, and column 19, lines 5-20, wherein the program considers basic goods, retail goods, and seasonal goods of retailers).

Both Huang et al and Landvater disclose determining product and inventory needs for periods of promotions. Huang et al. specifically discloses a promotional calendar that considers price promotions, advertising promotions, promotions of substitute or complementary products, and new product introduction, where the products are basic sales goods, some with seasonal effects. Landvater specifically discloses fashion retail items. It is old and well known in retail that fashion items are items that are affected by the change in season. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include fashion items in the items of Huang et al. affected by seasonal factors in order to more accurately account for all factors that would cause fluctuations in demand patterns, thus allowing the user to better plan for demand.

As per claim 10, Huang et al. teaches wherein the set of analysis programs operate on daily or more frequent period forecasts (See at least column 8, lines 1-25, which discloses daily).

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As per claim 11, Huang et al. teaches wherein the set of analysis programs operate on weekly forecasts (See at least column 7, lines 50-52, and column 8, lines 1-25, which discloses weekly).

Claims 12-15 recite equivalent limitations to claims 2-5, respectively, and are therefore rejected using the same art and rationale set forth above.

As per claim 20, Huang et al. teaches wherein the analytical reports include open to buy reports (See column 10, lines 45-50, column 21, lines 20-30, column 107, lines 45-55, column 108, lines 25-42, which discloses budget concerns).

Claims 21-34 recite equivalent limitations to claims 2-15, respectively, and are therefore rejected using the same art and rationale set forth above.

As per claim 39, Huang et al. teaches wherein the analytical reports include a promotions management report (See column 11, lines 5-16 and column 54, lines 49-67; which discloses outputting analysis and reports of promotional effects, which includes reducing a price by a given percentage).

Claims 40-53 recite equivalent limitations to claims 2-15, respectively, and are therefore rejected using the same art and rationale set forth above.

As per claim 58, Huang et al. teaches wherein the analytical reports include bottom-up planning reports (See column 11, lines 5-16, column 12, lines 50-65, column 20, line 55-column 21, line 30, column 108, lines 15-25, which discloses bottom up planning).

Claims 59-72 recite equivalent limitations to claims 2-15, respectively, and are therefore rejected using the same art and rationale set forth above.

***Response to Arguments***

4. Applicant's arguments with regards to Huang et al. (U.S. 6,151,582) in view of Landvater (U.S. 6,609,101) have been fully considered, but they are not persuasive. In the remarks, applicant argues that (1) Huang teaches manufacturing supply chain, not retailing, and teaches away from using store specific data, (2) Huang does not teach forecasting unit inventory and unit sales at a per item, per selling location level and does not teach a store-by-store basis (claim 96), (3) Huang does not teach simulation of sales at stores, (4) The proposed modification in claim 96 changes the principle of operation of the reference because switching from bulk customer forecast data to simulating daily sales at individual customer stores would further change Huang's principle operation, (5) there is no evidence of record that one of skill in the art would attempt to combine a manufacturer's manufacturing system with a retailer's retail planning system and further the details of Landvater would not even be considered by one of ordinary skill in the art, (6) Unlike the claimed invention, Huang's bottom-up means customers to manufacturers, not from individual stores to manufacturers, (7) as per claim 97, Huang does not teach or suggest exogenous factors in either the promotion class or the promotion type attributes and Huang does not provide an enabling disclosure of a data structure coded with event types, (8) As per claim 97, Landvater does not teach or suggest the missing elements of promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction and special events in a city that increase customer traffic at a selling location, (9) As per claims 98-99, Huang does not teach or suggest any of the claimed reports, (10) Applicant challenges the official notice that simulation is used at a store level to generate markdown

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timing and level recommendations, stating that Examiner must provide a declaration or documentary evidence to support the rejection, (11) Huang in view of Landvater do not teach or suggest open to buy reports or bottom-up planning reports (Per claims 20 or 58), (12) Examiner uses the claims as a blueprint or roadmap with respect to claims 2-5, (13) Huang in view of Landvater do not teach or suggest fashion retail goods (claims 9, 28, 47, 66).

In response to argument (1), Examiner respectfully disagrees. First, Examiner disagrees with Applicant's characterization of her rejections. Applicant states that "Examiner's form of argument is first to assert that every limitation of the claim is met by Huang, then to contradict herself by admitting at least some of what Huang lacks". Examiner respectfully requests applicant to reread the rejections set forth above. Examiner clearly states that "However, Huang et al. does not expressly disclose that a selling location identifier is stored in association with a retail event type". This piece was not asserted as taught by Huang in the rejections set forth by the Examiner. Therefore, examiner did not assert that everything is taught by Huang and examiner is further unclear as to what the Applicant is trying to establish by their assertions.

As to Huang teaching a manufacturing supply chain, not a retailing chain, and teaching away from using store specific data, examiner respectfully disagrees. First, nothing in the claim requires it to be at a retailing level; to the contrary, the claim recites "forecasting [...] at a per-item, per-selling location level", which implies that the forecasting is done at a higher level than the retail level (i.e. by a person with access to data of each location and item). The analytical reports generated support retailing activities; however, this again does not require that the claim occurs at a single retail store

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level. It is clear in Huang that retailing occurs, since Huang discloses promotions and sales, which are retailing events. Further, Landvater was relied upon to teach selling locations associated with products and promotions. See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17.

In response to argument (2) that Huang does not teach forecasting unit inventory and unit sales at a per item, per selling location level and does not teach a store-by-store basis, Applicant is reminded that this rejection is based on Huang in view of Landvater. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Huang was relied upon to teach forecasting unit inventory and unit sales at a per-item, per-location level. Huang expressly discloses required and managed inventory for customer sites/stores. See column 13, lines 1-10 and 27-35, column 18, line 45-column 19, line 10 and lines 48-58, column 55, column 57, lines 13-35, and column 109, lines 20-30 and 46-61, which discloses making inventory determinations using the data stored and expected demand impacts. Huang expressly teaches that there are promotions and advertisements in store locations, as well as retail sales. Examiner then relied on Landvater to disclose storing selling location identifiers associated with products with promotions (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17). Landvater specifically discloses retail store chains and generating data for specific stores and specific items. Therefore, when

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combined, Huang in view of Landvater plans supply for individual locations/stores for retailing.

In response to argument (3), Examiner points out that claim 96 only recites simulated in the preamble of the claim. None of the positively recited steps in the body of the claim include simulating sales at stores. It is noted that the features upon which applicant relies (i.e., simulation of sales at stores) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Huang does teach and suggest modeling with a causal event calendar, which is a data structure stored in computer readable memory, a plurality of retail event types that have different impacts on demand, wherein an event data tuple for an event in the causal event calendar includes at least a good identifier, a start date, a stop date and an event type identifier. See column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38 (specifically 6-15, 20-22, and 34-35), column 33, lines 65-67, column 34, lines 15-20, column 37, lines 39-46, which discloses event calendars with types of events that include good identifiers, dates, and event type data. Using the data stored and expected demand impacts, inventory determinations are made. See also column 42, lines 20-35, column 53, lines 49-58, and column 54, lines 40-67, column 109, lines 30-52.

In response to argument (4), Examiner respectfully disagrees. Huang teaches considering the inventory needs of individual stores and inventory replenishment for these stores. Landvater specifically discloses multiple retail and using product/location data to make forecast decisions for the retail stores. The needs of the individual sites in



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the system of Huang are calculated at those sites using systems such as those taught by Landvater. See column 17, lines 35-57, column 19, lines 5-17, of Landvater that disclose the unique and specific needs of specific locations in the supply chain. Therefore, there is no change in the principle operation of Huang, which is to supply inventory to sites based on historical data and future performance goals.

In response to argument (5), Examiner respectfully disagrees. Huang et al. specifically discloses retail outlets and using a promotional calendar that considers type of promotion, promotion dates, impact of promotion, etc. Landvater specifically discloses multiple retail stores in the supply chain, and using product/location data to make forecast decisions. The needs of the individual sites in the system of Huang are calculated at those sites using systems such as those taught by Landvater. See column 17, lines 35-57, column 19, lines 5-17, of Landvater that disclose the unique and specific needs of specific locations in the supply chain.

Examiner reminds applicant that KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support the finding of obviousness.

In response to argument (6), Examiner respectfully points out that the claims do not recite that bottom-up means customers to manufacturers, not from individual stores to manufacturers. Again, it is noted that the features upon which applicant relies (i.e., bottom-up means customers to manufacturers) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nothing in the claims discloses that bottom-up means customers to manufacturers. Huang explicitly teaches bottom up planning in column 11,

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lines 5-16, column 12, lines 50-65, column 20, line 55-column 21, line 30, column 108, lines 15-25.

In response to argument (7), Examiner respectfully disagrees. Examiner points out that claim 97 does not expressly recite “promotion class or the promotion type attributes”, but rather “price promotions, advertising promotions, promotions of substitute or complementary products”. Huang et al. discloses price promotions, advertising promotions, promotions of substitute or complementary products in column 22, lines 15-30, column 36, lines 50-65, column 54, lines 60-67, column 55, lines 20-33, which discloses price reductions and promotions and causing customers to purchase for example substitute products (instead of what they intended to by) based on these promotions. These sections further disclose advertisements. See also column 13, lines 25-35 and 50-55, column 34, lines 60-67, column 39, lines 60-65, column 55, lines 20-33.

In response to argument (8), Examiner points out that she did not rely upon Landvater to disclose promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction, but rather Huang. See column 13, lines 25-35 and 50-55, which specifically discloses new product release/introduction. Column 22, lines 15-30, column 36, lines 50-65, column 54, lines 60-67, column 55, lines 20-33, which discloses price reductions causing customers to purchase for example substitute products (instead of what they intended to by) as well as phasing out such as item at the end of it's season. Huang further discloses seasonal events and special events in a city that increase customer traffic (See column 19, lines 30-40, column 21, 15-25, column 33, lines 65-67, column 36, lines 60-65, column 54, line 60-column 55, line 20, which discloses seasonal events and

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special events (like military shows) that increase usage and demand for an item).

Therefore, Huang et al. does teach and suggest these limitations.

In response to argument (9), Examiner respectfully disagrees. Claim 96 recites generating analytical reports that support retailing activities. Claims 98-99 recite wherein generating analytical reports further includes reports to support ordering items from suppliers, allocating item inventory, etc. Claims 98-99 do not recite that a report is generated for each retail activity, but rather report (i.e. 2, 3, etc.) support the activity. As per claim 96 and 98, Huang et al. does teach and suggest generating reports via the calendar. See column 11, lines 5-16, column 106, lines 60-67, column 107, lines 37-55, column 108, lines 15-25 and 33-45, column 109, lines 45-60, which discloses generating reports via the system of Huang, these reports supporting other activities in the system. The information of the reports supports activities such as ordering items from suppliers (See column 7, lines 15-21, column 13, lines 44-55, column 31, lines 19-21, column 33, lines 30-45 and line 60-column 34, line 18, column 36, lines 40-67), allocating item inventory for seasonal or fashion items received from suppliers among selling locations (See column 13, lines 44-55, column 31, lines 19-21, column 33, lines 30-45 and line 60-column 34, line 18, column 36, lines 40-67, column 42, lines 20-35, wherein the seasonal items are allocated among outlets of the supply chain. See figure 4), etc. There is no requirement for a report to be generated concerning each individual sales activity.

In response to argument (10), Examiner points out that she took official notice of it being old and well known to allow a system to recommend an inventory setting, such as pricing, instead of requiring the user to set such a value in order to optimize the profit gained by selling the inventory, not of using simulation at a store level to generate

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markdown timing and level recommendations. Examiner is not clear where the claims specifically recite simulation or using simulations to generate markdown timing and level recommendations. Therefore, Applicant has not provided adequate information or arguments so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice. There are minimum requirements for a challenge to Official Notice:

(a) In general, a challenge, to be proper, must contain adequate information or arguments so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice

(b) Applicants must seasonably traverse (challenge) the taking of Official Notice as soon as practicable, meaning the next response following an Office Action. If an applicant fails to seasonably traverse the Official Notice during examination, his right to challenge the Official Notice is waived.

Bald statements such as, “the Examiner has not provided proof that this element is well known” or “applicant disagrees with the Examiner’s taking of Official Notice and hereby requests evidence in support thereof”, are not adequate and do not shift the burden to the Examiner to provide evidence in support of the Official Notice. Therefore, Applicant has not provided adequate information or arguments so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Therefore, the presentation of a reference to substantiate the Official Notice is not deemed necessary. The Examiner’s taking of Official Notice has been maintained.

In response to argument (11), Examiner respectfully disagrees. Claim 20 recites “wherein the analytical reports include open to buy reports”. Huang et al. discloses in

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column 10, lines 45-50, column 21, lines 20-30, column 107, lines 45-55, column 108, lines 25-42, considering budget concerns in terms of inventory. As per the Applicant's own specification, Open to Buy deals with predicting inventory and comparing this inventory to budget information to determine what can be purchased. Claim 58 specifically recites that "the analytical reports include bottom-up planning reports". See column 11, lines 5-16, column 12, lines 50-65, column 20, line 55-column 21, line 30, column 108, lines 15-25, which expressly disclose and recite bottom up planning and its occurrence.

In response to argument (12) that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to argument (13), Examiner respectfully disagrees. Huang et al. was relied upon and does disclose basic retail goods and to seasonal retail goods. See column 6, lines 1-20 and 55-65, column 7, lines 5-22, column 12, lines 25-50, column 36, lines 60-65, which discloses goods of retailers and goods that are associated with seasons (such as seasonal events and special events (like military shows) that increase usage and demand for an item. Landvater was relied upon to specifically teach fashion retail goods. See column 12, lines 9-40, column 15, lines 25-50, and column 19, lines 5-20, wherein the program considers basic goods, retail goods, and seasonal goods of retailers. See also

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column 19, lines 1-15, and column 21, lines 49-60, wherein fashion goods are discussed. Examiner notes that the claims are rejected over Landvater as a whole, and the citations presented by examiner are guides. Therefore, Landvater does teach and suggest fashion items being sold.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*bvd*

bvd

October 9, 2007

*Beth Van Doren*  
**BETH VAN DOREN**  
**PRIMARY EXAMINER**  
*AU 3623*